IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 16949 of 2004

Between:

Majji Appala Naidu, S/o. Late Chinnayya,
R/o. Kanakalabba, Dabagardents, Visakhapatnam.

..... PETITIONER

AND

The Municipal Commissioner, Municipal Corporation Buildings,

Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate writ or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent in constructing scheme buildings in 1900 sq. yards instead of 1500 sq yards as agreed in plan appended with MOU dt. 3-11-2002 as highly arbitrary and illegal and consequentially direct the respondent to stop construction of scheme buildings in an extent of 400 sq yards land situated in Sy.No. 1451, block No. 41, Allipuram Ward, Kanakaladibba Visakhapatnam forthwith, with is not agreed and allotted as per the plan appended and condition in the Memorandum of Understanding dt. 23-11-2002.

Counsel for the Petitioner:MR.T.M.K.CHAITANYA

Counsel for the Respondent No.: MR.T.S.VENKATARAMANA

The Court at the admission stage made the following ORDER:

Petitioner, claiming to be the successor of the property admeasuring 5,800 sq. yards in S.No.1451, Block No.41, Allipuram ward, Kanakaladibba, Visakhapatnam, filed W.P.No.6256 of 2004 before this Court alleging that the respondent, without complying the conditions of Memorandum of Understanding dated 23.11.2002, constructing the houses in the site in question. This Court, while admitting the said writ petition, observed that the Municipal Corporation is not precluded from constructing the scheme houses as per M.O.U. Pending the said writ petition, the petitioner approached this Court by way of the present writ petition alleging that the respondent is constructing buildings in 1900 sq. yards instead of 1500 sq. yards, as per M.O.U. dated 23.11.2002.

In W.P.No.6256 of 2004, the respondent-Corporation filed counter-affidavit admitting the M.O.U. dated 23.11.2002 and one of the conditions of it is that the first respondent shall evict the slum dwellers and the land owners shall surrender 1500 sq. yards to the respondent. On signing the said M.O.U., the acquisition proceedings initiated under A.P. Slum (Improvement and Acquisition of Land) Act, 1956 were withdrawn. Subsequently, the first respondent constituted a Committee, which submitted a report to the effect that the petitioner and his family members undertook to surrender 1500 sq. yards.

Learned standing counsel for the Municipal Corporation produced the undertaking signed by the petitioner and respondents 2 and 3 in W.P.No.6256 of 2004, wherein the petitioner agreed to hand over the additional land

admeasuring 240 sq. yards as requested by the Corporation, since it promised to send proposals to the Government for extending the facility of Transferable Floating FSI allowed on the said entire land in favour of the petitioner.

Heard learned counsel on either side.

On appreciation of the material available on record, it emerges that the dispute is with regard to the exact area, which was agreed to be surrendered by the petitioner. The said fact has also been admitted by respondents 2 and 3 in their counter filed in W.P.No.6256 of 2004. In view of the same, the submission made by the learned counsel for the petitioner that the respondent has not confined the construction of housing programme to 1500 sq. yards and extended it beyond the same, cannot be considered. Since the said fact is disputed by producing the M.O.U., as admitted in the counter filed by respondents 2 and 3, I see no grounds to entertain the writ petition. The petitioner is at liberty to seek suitable amendment in W.P.No.6256 of 2004 and obtain necessary orders.

The writ petition is accordingly dismissed.

02.11.2004

ksld

To

1 The Municipal Commissioner, Municipal Corporation Buildings,

Visakhapatnam.

2 Two CD copies.